

earnings record as was the deceased individual for the month in which such individual died (if more than one such parent, in equal shares to each such parent). For this purpose, the definition of “parent” in § 404.374 includes the parent(s) of any deceased individual who was entitled to benefits under title II of the Act.

(4) The surviving spouse of the deceased individual (as defined in section 216(c), (g), or (h) of the Act) who does not qualify under paragraph (b)(1) of this section.

(5) The child or children of the deceased individual (as defined in section 216 (e) or (h) of the Act) who do not qualify under paragraph (b)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual, who do not qualify under paragraph (b)(3) of this section (if more than one such parent, in equal shares to each such parent). For this purpose, the definition of “parent” in § 404.374 includes the parent(s) of any deceased individual who was entitled to benefits under title II of the Act.

(7) The legal representative of the estate of the deceased individual as defined in paragraph (d) of this section.

(c) In the event that a person who is otherwise qualified to receive an underpayment under the provisions of paragraph (b) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his share of the underpayment will be divided among the remaining living person(s) in the same order of priority. In the event that there is (are) no other such person(s), the underpayment will be paid to the living person(s) in the next lower order of priority under paragraph (b) of this section.

(d) *Definition of legal representative.* The term *legal representative*, for the purpose of qualifying to receive an underpayment, generally means the administrator or executor of the estate of the deceased individual. However, it may also include an individual, institution or organization acting on behalf of an unadministered estate, provided that such person can give the Administration good acquittance (as defined in paragraph (e) of this section). The fol-

lowing persons may qualify as legal representative for the purposes of this subpart, provided they can give the Administration good acquittance:

(1) A person who qualifies under a State’s *small estate* statute,

(2) A person resident in a foreign country who, under the laws and customs of that country, has the right to receive assets of the estate,

(3) A public administrator, or

(4) A person who has the authority, under applicable law, to collect the assets of the estate of the deceased individual.

(e) *Definition of “good acquittance.”* A person is considered to give the Administration *good acquittance* when payment to that person will release the Administration from further liability for such payment.

[34 FR 14487, Sept. 27, 1969, as amended at 35 FR 14129, Sept. 5, 1970; 55 FR 7313, Mar. 1, 1990; 60 FR 17445, Apr. 6, 1995]

§ 404.504 Relation to provisions for reductions and increases.

The amount of an overpayment or underpayment is the difference between the amount paid to the beneficiary and the amount of the payment to which the beneficiary was actually entitled. Such payment, for example, would be equal to the difference between the amount of a benefit in fact paid to the beneficiary and the amount of such benefit as reduced under section 202(j)(1), 202(k)(3), 203(a), or 224(a), or as increased under section 202(d)(2), 202(m), or 215 (f) and (g). In effecting an adjustment with respect to an overpayment, no amount can be considered as having been withheld from a particular benefit which is in excess of the amount of such benefit as so decreased.

[34 FR 14888, Sept. 27, 1969]

§ 404.505 Relationship to provisions requiring deductions.

Adjustments required by any of the provisions in this subpart F are made in addition to, but after, any deductions required by section 202(t), 203(b), 203(c), 203(d), and 222(b) of the Act, or section 907 of the Social Security Act